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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,795	01/15/2002	Bernadino J. Pavone	65,199-004	6418

7590 04/23/2004  
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EXAMINER

SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/046,795	PAVONE, BERNADINO J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Spisich	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 12-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/02</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the invention of group I in Paper of 19 March 2004 is acknowledged.
2. Claims 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper of 19 March 2004.

### ***Drawings***

3. Figures 1-8 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The disclosure is objected to because of the following informalities: "212" (page 7, line 13) should be -- 214 --.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is a missing term or phrase in claim 1 ("has a flexible with respect" in line 6) which is confusing and as such renders the claim confusing. It would appear that claim 4 is incorrect in that the handle and head, an not

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the neck, are oriented parallel to each other. Claims 8 and 9 each improperly depend from claim 6. They should instead depend from claim 7, as this claim provides antecedent for the recited "grooves". Applicant should review the claims for any additional informalities.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,5,7,8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Halm (USP 5,052,071). The patent to Halm discloses a toothbrush comprising a head (10) with extending bristles (12), a neck (18,20) angularly (see fig 1) connected to the head, and a handle (14) connected with the neck and further wherein the neck is flexible (at region 18) with respect to the handle. Halm further discloses that the toothbrush is formed by a rigid bade material as well as elastomeric grip pads (26) (claim 5) and that the flexible region includes transverse grooves (figs 1-3 and 5) (claims 7 and 8). Claim 10 is drawn to a method of manufacture and is not germane to the patentability of the article itself.

8. Claims 1,3,7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Huang et al (USP 5,694,658). The patent to Huang discloses a toothbrush (10) comprising a head (14) with extending bristles (16), a neck (the region 18) angularly extending from the head and a handle (20) connected to the neck and further wherein

the neck is flexible such that it can flex with respect to both the head and handle. The upper and lower portions of the aperture (26) (fig 2) read on the recited grooves of claims 7 and 9.

9. Claims 1-3,5,6 and 10 are ejected under 35 U.S.C. 102(b) as being anticipated by O'Halloran (USP 5,765,254). The patent to O'Halloran discloses a toothbrush (10) comprising a head (14) with extending bristles (24), a neck angularly (fig 3) extending from the head in a general direction opposite the bristles (claim 2) and a handle connected to the neck and further wherein the neck is flexible such that it is adapted to flex relative to the head and handle. Column 3 (lines 5-18) discloses that the head/neck/handle may comprise different materials (of varying flexural modulus) and reasonably reads on claims 5 and 10. With regard to claim 6, the parts of the toothbrush of O'Halloran are discloses as being polymeric with the head and handle being more rigid than the neck and thus can be said to includes "stiffereners" to the extent required by claim 6.

10. Claims 1,3,5,7,8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Halm (USP 5,903,949). The patent to Halm discloses a toothbrush comprising a head (1) with extending bristles (3), a neck region angularly (see fig 3) extending from the head and a handle (2) connected to the neck and further wherein the neck region is flexibly connected to both the handle (at region 5) and the head (at 15). Halm also discloses the transverse grooves (fig 2).

11. Claims 1,3,5,7,8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Halm (USP6,101,659). The patent to Halm discloses a toothbrush comprising a

head (1) with extending bristles, neck (7) angularly extending from the head (see figs 11,13) and handle (6) connected to the neck and further wherein the neck is flexibly connected to each of the handle (at 9) and the head (at 11). Region 9 has the transverse grooves.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over CH 672,052 in view of Peters (USP 4,520,526). '052 discloses a toothbrush comprising a head (2) with bristles (7), neck (6) angularly extending from the head and handle (1) connected to the neck with the neck extending from the head in a direction opposite the bristles (claim 2) and the handle and head are parallel to each other (claim 4). '52 discloses the invention substantially as claimed with the exception of the neck being flexible with respect to the head and handle. The patent to Peters disclose a toothbrush provided with a flexible neck region (18). It would have been obvious to one of ordinary skill to have modified the device of '052 as such to prevent the application of excess pressure to the teeth and gums.

14. Claims 1-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavone et al (USP 5,325,560) in view of Peters (USP 4,520,526). The patent to Pavone, as it is the same toothbrush as figs 1-8 of the present application, discloses the

basic components of the claims invention with the exception of the flexible neck. The patent to Peters discloses a flexible neck (18) in a toothbrush. It would have been obvious to one of ordinary skill to have modified the device of Pavone as such to prevent the application of excessive pressure to the teeth.


### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Leversby is pertinent to the disclosed molding process and the other to toothbrushes with flexible brush heads.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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1200